with an inherent capacity limit in each DS1 of 1.544 Mbps. XO has never found EoS to be a major offering, in large part because to purchase finished services and convert them to Ethernet requires pricing that is much higher than other market alternatives. Further, the capacity of EoS offerings is rigid – not scalable – and so not as attractive to customers who anticipate growing needs. As a result, EoS services are in decline.

19. ILECs make Ethernet services available at wholesale, although the wholesale pricing is sufficiently high that XO is unable, with its standard allocation above its wholesale input costs, to offer competitive prices in those locations where ILECs are reducing retail prices, whether in response to facilities-based competition or for some other reason. Nonetheless, approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the Ethernet services XO sells at retail come directly from price cap ILEC sources. The percentage of XO's total off-net purchases supplied by the ILECs has been **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** in recent years. This reflects the fact that more end users are moving to Ethernet services and XO's customers increasingly require connections in areas beyond where XO or competitive providers have or are able to cost-effectively construct facilities. Where XO can purchase Ethernet services from alternative providers that have facilities, the prices and service are better than those of the price cap ILECs. Unfortunately, because competitive providers are often offering service to a limited number of the buildings or buildings in certain commercial areas, alternative sources of supply to the price cap ILECs are in most locations not available. Hence, XO continues to purchase at wholesale largely from the ILECs despite the high price and poor service. Given the cost of building network facilities, XO does not foresee this situation changing soon despite the high price and lower quality service offered by ILECs and despite the fact that by either using its

facilities or those of more responsive providers, XO can better control its product offerings and obtain larger margins.

20. Because it continues to rely on ILEC Ethernet services as a wholesale input to a considerable degree, XO is at a substantial economic disadvantage in providing Ethernet service to retail customers, and it expects this competitive disadvantage to continue because it will take many years for competitive providers to build extensive networks, particularly last-mile facilities. Additionally, there are recent signs that the ILECs are seeking to take even greater advantage of their market control as they have lowered their retail Ethernet prices in the past several years by **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** XO anticipates that this trend will continue, with as much as a **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** reduction in ILEC Ethernet prices in the next twelve months. (Notably, the pricing for TDM-based services that XO has experienced has remained relatively flat over the same period.) This creates a price squeeze because ILEC wholesale rates for Ethernet (or TDM inputs that CLECs could use to provide Ethernet, at least at lower speeds) have dropped little, if at all. Indeed over the past three years, AT&T has not lowered its wholesale rates.

21. As I noted earlier, XO relies heavily on the ILECs for wholesale inputs, including finished Ethernet services in the large number of locations where XO does not have and cannot economically establish a physical network presence. When ILEC retail rates decline but wholesale rates do not, XO faces difficulties competing. This price squeeze phenomenon is most marked in larger (downtown New York City, where Verizon is dominant) and mid-size markets, such as St. Louis (where AT&T is dominant).

22. XO may be able to overcome a price squeeze on Type II inputs by offering better terms and quality of service, but only where the price differential is relatively small ([**BEGIN HIGHLY CONFIDENTIAL**] [redacted] [**END HIGHLY CONFIDENTIAL**]). But with the ILECs decreasing retail Ethernet prices so substantially, ILECs are able to undercut XO by such a large amount, approximately **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** and sometimes higher, that they are effectively shutting XO out of markets. Thus, in St. Louis for example, XO offers 10 Mbps Ethernet service to retail customers in St. Louis for **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** using its standard mark-up of **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** over Type II facility costs, whereas AT&T's rate is $655. Similarly, XO's standard retail price is currently **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** for 100 Mbps in the city, whereas AT&T's retail charge is only $900. *See* Highly Confidential Exhibit D attached to this declaration.

23. XO's Sales Team in Memphis also recently reported to me that XO's pricing appears consistently higher when facing AT&T directly. Customers have informed us in that market that our pricing versus the competition, where AT&T is the type II provider, is at a minimum **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** higher than AT&T.

24. As a result of the foregoing market conditions, XO estimates that it can compete for only about **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of the mid- to larger-size business and enterprise customers in St. Louis, Memphis, Atlanta, Tampa, and Miami at this time using Type II services. Even that level of competition may prove difficult to sustain because enterprise customers are becoming

increasingly focused on pricing and increased network bandwidth, to the exclusion of other considerations. Other service quality factors by which competitors have historically distinguished themselves are becoming somewhat less important in negotiations with customers.

25. XO also may be able to **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** But, EoC, while remaining for now an important component of the evolution to an all-IP network, is at bottom a transitional technology and will ultimately vanish where fiber replaces copper. That phase-out of copper and use of fiber is already occurring in more dense markets, especially as customers demand greater speeds and bandwidth. In addition, as noted earlier, EoC depends upon the availability of numbers of clean, short copper loops to reach the higher speeds XO offers in its EoC service portfolio. Thus, the window for EoC is limited.

26. While XO may have some opportunities to extend its own fiber network to certain parts of the central business districts, it has a more limited budget for new construction compared to the ILECs – even with its recent **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** On-Net Initiative – and, accordingly, XO will continue to rely on the ILECs in most locations for wholesale inputs as the network transitions to fiber.

27. The network reach and market control of the ILECs is reflected in pricing plans of Ethernet services by the incumbents in comparison with the competitors. XO uses **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** vendors for Ethernet services today. Despite this, for XO, purchases of channel terminations from ILECs remain the most critical since there are few, if any, alternatives to the ILEC for such facilities to most end user locations. The clear majority of XO's channel termination purchases **[BEGIN HIGHLY**

CONFIDENTIAL] [redacted] **[END HIGHLY CONFIDENTIAL]** come from the three largest ILECs. Competitors have much smaller footprints than the ILECs and offer on-net service only within specific Metro areas, or, more accurately, portions thereof.

28. In markets where both ILECs and competitors are present, ILECs generally offer pricing that is the same for all buildings within the serving wire center area. (Within the last several months, AT&T departed from this practice and provided XO with an address-specific price list. XO signed an agreement in **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** with AT&T for its AT&T Switched Ethernet (ASE) Tier 1 rate service. The agreement reflects more aggressive pricing for a specific address list. The ASE Tier 1 building list includes more than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** buildings *nationwide*; within each wire center, all of the ASE Tier 1 buildings receive the same lower ASE Tier 1 rates at specific speeds (with a slightly modified rate if a network-to-network interface is included). **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** The buildings are spread throughout the region covered by AT&T and represent a subset of the buildings covered by the Serving Wire Center schedules. The buildings covered by ASE Tier 1 are a small percentage of the total buildings covered by the Serving Wire Center schedule. The other buildings not on the ASE Tier 1 list have the same pricing on a wire center-wide basis. But XO still receives pricing information from Verizon and CenturyLink based on wire centers, markets or even regions, not specific addresses. These ILEC practices differ materially from those of competitors, who offer pricing by the specific addresses which they serve, which is a small subset of all buildings which are within any given wire center.

XO itself does not quote retail rates based on mileage, as do ILECs. Most competitors follow this same practice, although some quote services on speed and mileage separately.

29. In contrast with the lack of choice for channel terminations in many locations, XO generally has more alternatives for interoffice transport, especially in Tier 1 and 2 markets where XO has market presence. These alternatives include XO's own on-net capabilities and those of other alternative competitors, especially in central business districts ("CBDs") and the "first ring" of the suburbs surrounding the CBDs.

30. Customers continue to request TDM-based services, although that number is **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** As of December 2015, Ethernet sales account for **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** of XO's new orders (in terms of dollars). Overall, XO's Ethernet revenues increased about **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** over the past year, even with falling retail prices. Meanwhile, XO's overall TDM revenues, which are less than **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** as large as the Ethernet revenues, have fallen off slightly, underscoring the trend. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]**

31. I would also note that XO retail customers increasingly move from TDM to Ethernet services, but once customers begin to take Ethernet service, XO finds they do not often

increase their TDM remaining service purchases. Similarly, once retail customers have transitioned to Ethernet services, it is safe to say that they never return to TDM services.

32. Those customers that continue to purchase TDM special access services are customers with investment in legacy equipment who seek to add new locations. For these customers, the cost of upgrading network equipment and shifting to a more technical/complex solution is the driving consideration for remaining with the legacy service. Some of XO's other TDM customers simply have more basic service needs. Similar resistance to changing bandwidth is not seen as Ethernet customers move to different speeds within the spectrum of Ethernet offerings. XO can typically re-tune Ethernet equipment to support higher speeds for customers, often through a remote hands contract.

33. XO's Small Account and some of the smaller Mid-Size Account customers are increasingly getting more service options at lower prices and that offer higher bandwidths (from cable companies), such as Best Efforts Internet service. This type of small customer has less need than medium and large businesses and enterprise-level customers for managed IP-based communications with quality of service ("QoS") assurances. Where XO loses some Small Account and smaller Mid-Size Account customers to companies offering Best Efforts Internet, it considers those customers as choosing a different product path because of their reduced service quality and feature needs, **[BEGIN HIGHLY CONFIDENTIAL]** [redacted] **[END HIGHLY CONFIDENTIAL]** XO does not offer Best Efforts Internet services. Thus, although XO's customer service team offers certain off-the-shelf (i.e. lower speed) products to this group of customers, at this smaller end of the customer market, providers of Best Efforts Internet service, such as cable companies, are making

increasing inroads. At this time, however, this is the only area currently in which XO and cable companies are regularly competing.

34. Cable companies in some limited areas in XO's markets nominally offer Ethernet services up to 500 Mbps or even 1 Gbps, but current shortcomings in their coaxial fiber backbone networks limit availability of that service, as a practical matter, to very few locations. As a result, cable companies have an especially difficult time at present offering Ethernet service to customers with multiple locations in the market. (Cable is more successful in the transport market, and XO will not uncommonly purchase Type II transport service from cable operators.)

35. Cable companies have yet to offer dedicated services which could attract XO's Large and most Mid-Market customers who do not find Best Efforts product acceptable. Best Efforts service is also not a competitive offering for wholesale customers.

36. As discussed above, XO uses price cap ILEC special access circuits overwhelmingly to support XO's "off net" channel termination services and transport for its TDM-based Ethernet products. Indeed, XO's reliance is even greater since a high percentage of these products that XO obtains from competitive providers (where XO's demand is not constrained by the ILEC's lock-up special access agreements), are actually resold ILEC TDM special access.

37. The length of XO's contracts varies by customer type, retail versus wholesale, reflecting the very different ways retail business and enterprise customers use the circuits relative to wholesale carrier customers. **[BEGIN HIGHLY CONFIDENTIAL]** [redacted]

[redacted]

[redacted] **[END HIGHLY CONFIDENTIAL]**

38. XO's contracts contain terms and conditions that differ markedly from the price cap ILEC's TDM special access volume and term commitments (so-called lock-up agreements). For smaller commercial customers, XO has standardized terms which govern most service order arrangements. If necessary, XO will negotiate special arrangements. With carrier and large enterprise customers, XO enters into national master service agreements ("MSAs"), which are individually negotiated and often have customer-specific terms and conditions. Once the MSAs are in place, customers can order circuits.

39. For both commercial and carrier customers, while XO contracts require them to buy a certain number of circuits and commit to a certain period to obtain a certain price, the terms and conditions are materially different than the terms that XO faces from the price cap ILECs. Unlike the volume commitments that XO has with price cap ILECs for TDM circuits, XO's carrier customers obtain rather short term commitments and do not face the sorts of pecuniary shortfall or early termination penalties that price cap ILECs impose on XO. However, to get the discounts they negotiated with XO, they need to make the purchases they bargained for.

40. Moreover, XO does not require a customer that might receive a discount in return for volume purchases to pledge to purchase a certain percentage of its total historic special access purchases at the time of renewal, as do a number of the special access agreements XO has with ILECs such as Verizon and, to a lesser extent, AT&T. Rather, XO negotiates the price based on the number of circuits the customer intends to purchase, without reference to what its

overall requirements are or historic spends have been. The price a customer pays in reality depends on the actual volume of its purchases. Where there is a volume or term commitment, XO has no ability in negotiations to impose "down turn" provisions of the sort XO is subject to in its agreements with price cap ILECs.

41. There is typically a sharp disparity between the contract XO has with its customer and the term wholesale agreement that XO has with an ILEC for the same circuit. In other words, the terms under which XO's buys its inputs are less advantageous to XO than the terms under which XO sells the same inputs to XO's retail customers. The terms and conditions of the price cap ILEC commitment plans thus prevent XO from covering the risks of the underlying circuits. For example, even though XO is able to assess early termination penalties ("ETPs") on its customers, market pressures are such that XO is typically unable to set that ETP high enough to cover the early termination liability of the underlying circuits. Often this is because the duration of the term of XO's agreements with its customers is shorter than that of the underlying circuits XO purchases from the price cap ILECs under the special access commitment plans. XO also incurs additional risk under the price cap ILEC plans because the failure to meet volume minimum commitments results in considerably high shortfall penalties, especially in the case of Verizon. XO, unlike the ILECs, does not have the market leverage to impose such terms.

42. XO also permits carrier customers to keep their rates and move to a month-to-month agreement upon expiration of the one-year terms. Even though the agreement may have a provision allowing XO to charge a higher rate in such circumstances, XO's competitors would likely attract the customer if XO tried to enforce that provision. This is in sharp contrast with price cap ILECs' commitment plans, which must be renewed by a carrier customer to maintain

the rates; otherwise the rates would skyrocket were the circuits to transition to a month-to-month plan. In a word, XO is locked in with the ILECs.

43. As explained in the preceding paragraphs, there is a clear disparity between the terms and conditions underlying XO's principal geographic dependent sources of supply for DS1 and DS3 transport and channel terminations – the price cap LECs' volume and term commitment plans – and the rates that XO is able to obtain, in turn, with its customers in the marketplace. In short, XO is being whipsawed by the price cap ILEC lock-up agreements because those carriers are able to impose onerous terms with impunity.

44. This discontinuity of terms between XO's wholesale purchases from price cap ILECs and its retail or carrier sales puts tremendous economic pressure on XO. In fact, on numerous occasions, XO fails to make a sale because the benefit of having the customer does not justify the assumption of the risks and potential penalties governing its underlying inputs, whether it be early termination liabilities or other onerous terms and conditions in the price cap ILEC commitment plans. XO tries to cover those risks where it can. But rather frequently, the risks are not acceptable and prevent XO from signing up the customer. These circumstances reveal indirectly the onerousness of the ILECs' special access discounts volume and term commitment plans.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2016

James A. Anderson

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT A

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

Total XO DSn Circuits as of Year End 2015

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT B

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

XO Active Off-Net DSn Circuits as of December 31, 2015

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT C

HIGHLY CONFIDENTIAL

Redacted for Public Inspection

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

XO New Off-Net Ethernet Spend (January 2013 - September 2015) (1000s of Dollars)

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT D

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL INFORMATION - SUBJECT TO SECOND PROTECTIVE ORDER IN WC NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

St. Louis Comparison of Retail Prices (December 2015)

(Bandwidth in Mbps)

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT E

HIGHLY CONFIDENTIAL

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

AT&T ASE PRICING INFORMATION

HIGHLY CONFIDENTIAL INFORMATION – SUBJECT TO SECOND PROTECTIVE ORDER IN WC DOCKET NO. 05-25, RM-10593 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

EXHIBIT F

HIGHLY CONFIDENTIAL

XO New Off-Net TDM and Ethernet Installations (September 2013 - December 2015)

[redacted]

[redacted]